

James Lynn Hines
K-86989
Arizona State Prison Camp
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Florence, AZ 85232

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3:08-cv-00446-DMS-JMA Hines v. Hagen et al

U.S. District Court

Southern District of California

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Case Name: Hines v. Hagen et al

Case Number: 3:08-cv-446

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Docket Text:

ORDER Dismissing Civil Action for Failing to Pay Filing Fee or Move to Proceed in Forma Pauperis pursuant to 28 U.S.C. 1915(a). The Court hereby Dismisses this action sua sponte without prejudice for failing to pay the \$350 filing fee or file a Motion to Proceed IFP. The Court Grants Plaintiff forty five (45) days leave from the date this Order is "Filed" to: (a) prepay the entire \$350 civil filing fee in full; or (b) complete and file a Motion to proceed IFP which includes a certified copy of his trust account statement for the 6-month period preceding the filing of his Complaint. If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the attached Motion to Proceed IFP within that time, this action shall remain dismissed without prejudice and without further Order of the Court. Signed by Judge Dana M. Sabraw on 3/11/08. (In Forma Pauperis form sent to Plaintiff).(lao)

3:08-cv-446 Notice has been electronically mailed to:

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James Lynn Hines
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Box 3400
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51c7dc35dbf97b78388998527198f1f1a19b757c266762b2cd8ab1378f288]]

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 JAMES LYNN HINES,
12 CDCR #K-86989, ADC #197067,

13 Plaintiff,

14 vs.

15 CAPT. DAN HAGAN, et al.,
16

17 Defendants.
18

Civil No. 08-0446 DMS (JMA)

**ORDER DISMISSING CIVIL
ACTION FOR FAILING TO PAY
FILING FEE OR MOVE TO
PROCEED *IN FORMA PAUPERIS*
PURSUANT TO 28 U.S.C. § 1915(a)**

19 Plaintiff, an inmate currently incarcerated at the Arizona State Prison Complex in
20 Florence, Arizona, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C.
21 § 1983.¹

22 **I.**

23 **Failure to Pay Filing Fee or Request IFP Status**

24 Effective April 9, 2006, all parties instituting any civil action, suit or proceeding in a
25 district court of the United States, other than a writ of habeas corpus, must pay a filing fee of
26 \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if
27

28 ¹ The Court notes that Plaintiff was a California state inmate. Thus, it is unclear whether Plaintiff is currently a California state inmate housed temporarily in Arizona or he is an inmate within the Arizona State correctional system.

1 the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a).
2 See *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

3 Here, Plaintiff has neither prepaid the \$350 filing fee required to commence this action,
4 nor has he submitted a Motion to Proceed IFP. Therefore, this action is subject to immediate
5 dismissal pursuant to 28 U.S.C. § 1914(a).

6 **II.**

7 **Conclusion and Order**

8 For the reasons set forth above, the Court hereby:

9 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
10 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

11 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is "Filed"
12 to: (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to proceed
13 IFP which includes a certified copy of his trust account statement for the 6-month period
14 preceding the filing of his Complaint pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR
15 3.2(b).

16 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with the
17 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*
18 *Pauperis*." If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the
19 attached Motion to Proceed IFP within that time, this action shall remain dismissed without
20 prejudice and without further Order of the Court.

21
22 DATED: March 11, 2008

23 
24 HON. DANA M. SABRAW
25 United States District Judge
26
27
28

PLAINTIFF/PETITIONER/MOVANT'S NAME

PRISON NUMBER

PLACE OF CONFINEMENT

ADDRESS

**United States District Court
Southern District Of California**

Plaintiff/Petitioner/Movant

v.

Defendant/Respondent

Civil No. _____

(TO BE FILLED IN BY U.S. DISTRICT COURT CLERK)

**MOTION AND DECLARATION UNDER
PENALTY OF PERJURY IN SUPPORT
OF MOTION TO PROCEED IN FORMA
PAUPERIS**

I, _____
declare that I am the Plaintiff/Petitioner/Movant in this case. In support of my request to proceed without prepayment of fees or security under 28 U.S.C. § 1915, I further declare I am unable to pay the fees of this proceeding or give security because of my poverty, and that I believe I am entitled to redress.

In further support of this application, I answer the following question under penalty of perjury:

1. Are you currently incarcerated? ☐ Yes ☐ No (If "No" go to question 2)

If "Yes," state the place of your incarceration _____

Are you employed at the institution? ☐ Yes ☐ No

Do you receive any payment from the institution? ☐ Yes ☐ No

[Have the institution fill out the Certificate portion of this affidavit and attach a certified copy of the trust account statement from the institution of your incarceration showing at least the last six months transactions.]

2. Are you currently employed? ☐ Yes ☐ No

a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer. _____

b. If the answer is "No" state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer. _____

3. In the past twelve months have you received any money from any of the following sources?:

- | | |
|---------------------------------------------------|----------------------------------------------------------|
| a. Business, profession or other self-employment | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| b. Rent payments, royalties interest or dividends | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| c. Pensions, annuities or life insurance | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| d. Disability or workers compensation | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| e. Social Security, disability or other welfare | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| f. Gifts or inheritances | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| g. Spousal or child support | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| h. Any other sources | <input type="checkbox"/> Yes <input type="checkbox"/> No |

If the answer to any of the above is "Yes" describe each source and state the amount received and what you expect you will continue to receive each month. _____

4. Do you have any checking account(s)? ☐ Yes ☐ No

a. Name(s) and address(es) of bank(s): _____

b. Present balance in account(s): _____

5. Do you have any savings/IRA/money market/CDS' separate from checking accounts? ☐ Yes ☐ No

a. Name(s) and address(es) of bank(s): _____

b. Present balance in account(s): _____

6. Do you own an automobile or other motor vehicle? ☐ Yes ☐ No

a. Make: _____ Year: _____ Model: _____

b. Is it financed? ☐ Yes ☐ No

c. If so, what is the amount owed? _____

7. Do you own any real estate, stocks, bonds, securities, other financial instruments, or other valuable property?

☐ Yes ☐ No

If "Yes" describe the property and state its value. _____

8. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support. _____

9. List any other debts (current obligations, indicating amounts owed and to whom they are payable): _____

10. List any other assets or items of value (specify real estate, gifts, trusts inheritances, government bonds, stocks, savings certificates, notes, jewelry, artwork, or any other assets [include any items of value held in someone else's name]): _____

12. If you answered all of the items in #3 "No," and have not indicated any other assets or sources of income anywhere on this form, you must explain the sources of funds for your day-to-day expenses. _____

I declare under penalty of perjury that the above information is true and correct and understand that a false statement herein may result in the dismissal of my claims.

DATE

SIGNATURE OF APPLICANT

If you are a **prisoner** you must have an officer from your institution provide this official certificate as to the amount of money in your prison account. There are no exceptions to this requirement.

PRISON CERTIFICATE
(Incarcerated applicants only)
 (To be completed by the institution of incarceration)

I certify that the applicant _____
 (NAME OF INMATE)

 (INMATE'S CDC NUMBER)

has the sum of \$ _____ on account to his/her credit at _____

 (NAME OF INSTITUTION)

I further certify that the applicant has the following securities _____

to his/her credit according to the records of the aforementioned institution. I further certify that **during**

the past six months the applicant's *average monthly balance* was \$ _____

and the *average monthly deposits* to the applicant's account was \$ _____

**ALL PRISONERS *MUST* ATTACH A CERTIFIED COPY OF THEIR TRUST ACCOUNT
 STATEMENT SHOWING TRANSACTIONS FOR THE SIX-MONTH PERIOD
 IMMEDIATELY PRECEDING THE FILING OF THE COMPLAINT PER 28 U.S.C. § 1915(a)(2).**

 DATE

 SIGNATURE OF AUTHORIZED OFFICER OF INSTITUTION

 OFFICER'S FULL NAME (PRINTED)

 OFFICER'S TITLE/RANK

TRUST ACCOUNT WITHDRAWAL AUTHORIZATION
(Incarcerated applicants only)

(This form **MUST** be completed by the prisoner requesting to proceed in forma pauperis. An incomplete "Trust Account Withdrawal Authorization Form," or "Prison Certificate" will result in automatic denial of the prisoner's request to proceed in forma pauperis.)

I, _____, request and authorize the agency holding me in
(Name of Prisoner/ CDC No.)
custody to prepare for the Clerk of the United States District Court for the Southern District of California, a
certified copy of the statement for the past six months of my trust fund account (or institutional equivalent)
activity at the institution where I am incarcerated.

I further request and authorize the agency holding me in custody to calculate and disburse funds from my
trust fund account (or institutional equivalent) pursuant to any future orders issued by the Court relating to
this civil action pursuant to the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, Title VIII, §§ 801-
10, 110 Stat. 1321 (1996).

This authorization is furnished in connection with a civil action filed in the Southern District of California,
and I understand that, pursuant to 28 U.S.C. §§ 1914 and 1915(b)(1), the total amount of filing fees for which
I am obligated is either ☐ \$350 (civil complaint) or ☐ \$5 (habeas corpus petition) (check one). I also
understand that this fee will be debited from my account regardless of the outcome of this action. This
authorization shall apply to any other agency into whose custody I may be transferred.

DATE

SIGNATURE OF PRISONER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

OFFICE OF THE CLERK U.S. DISTRICT COURT
880 FRONT STREET, SUITE 14280
SAN DIEGO, CALIFORNIA 92101-8900

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SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

Reason Checked by ASPC-Eyman

Need Inmate Name

Need Inmate Number

Name & Number Don't Match

Name & Number Illegible

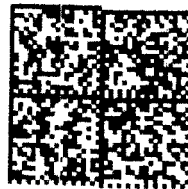
Refused by Inmate

For An ASPC-E

Unsubstantiated Correspondence

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